

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
V.)	CASE NO: 2:05-cr-175-LSC
)	
MARCUS JABOR ALLS)	

MOTION IN LIMINE–SHOTGUN AND RELATED AMMUNITION

COMES NOW the Defendant, **MARCUS JABOR ALLS**, by undersigned counsel, and hereby moves *in limine* for an Order directing the United States to refrain from placing any statement, argument, evidence or testimony before the jury that a shotgun and ammunition for that shotgun were found either in Mr. Alls' car or on Mr. Alls' person. In support of this motion, the Defendant would show the following:

1. On January 22, 2005, Troy police officers responded to a report of gunshots fired in the area of Cactus Lane in Troy, AL. While at that location, police officers recovered from Mr. Alls' car two pistols, which are charged in the indictment, a shotgun, which is not charged in the indictment, and ammunition for all three guns. A police officer also recovered a shotgun shell from Mr. Alls' pants pocket.

2. According to the Troy Police Department's Arrest Report, Case No. 0501-2163, dated January 22, 2005, police officers recovered the following items from the following locations: two pistols from underneath the passenger's seat of the car (according to the Report the butt of one of the guns was sticking out into the foot board area), the ammunition for the pistols from underneath both the driver's side floor mat and the

passenger's side floor mat, the shotgun from the backseat, a belt bandoleer with shotgun ammunition from the front passenger's seat, three rounds of shotgun ammunition from the back floor board area, and one shotgun shell from Mr. Alls' pants pocket.

3. According to the Police Report, neither the shotgun nor any of the shotgun ammunition were found in the same area of the car where the pistols and the pistol ammunition were found. Quite simply, the fact that the shotgun and the ammunition were found in the car in a location different from where the pistols and pistol ammunition were found isn't probative of whether Mr. Alls knew that the pistols were in the car. Likewise, the fact that the police found a shotgun shell in Mr. Alls pants pocket may be probative of whether he knew the shotgun was in the backseat of the car, but it is no way probative of whether he knew that there were two pistols under the front passenger's seat.

4. The United States could have indicted Mr. Alls for being a felon in possession of the shotgun or any of the shotgun ammunition. This it chose not to do. The fact that a shotgun and shotgun ammunition were found in the car in a location different from where the pistols and pistol ammunition were found simply isn't relevant under Federal Rule of Evidence 401 and should be excluded under Rule 402.

Dated this 11th day of February, 2006.

Respectfully submitted,

s/ Donnie W. Bethel
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CERTIFICATE OF SERVICE

I hereby certify that on 11th day of February, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

David Cooke, Esquire
Assistant United States Attorney
One Court Square, Suite 201
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Respectfully submitted,

s/ Donnie W. Bethel
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